IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Mr.Narayan v. State of Raj. & Ors.

S.B.CIVIL WRIT PETITION NO.1982/2004
under Articles 226 and 227 of the Constitution of India.

Date of Order : 10th March, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. S.P. Arora, for the petitioner.
Mr. S.N. Tiwari, Dy. Govt. Advocate.

BY THE COURT :

By this petition for writ the petitioner is claiming post retiral benefits including pension as he retired from services w.e.f. 26.6.1992 after serving respondents for a period of more than 18 years.

The contention of the petitioner is that he entered in the services of the respondents on 10.11.1973 being appointed as a daily rated employee. Regular pay scale was sanctioned to him under an order dated 27.11.1974. The petitioner was also allowed the increments as and when he

became entitled for the same. A personal pay of Rs.30/- was also allowed to him w.e.f. 7.11.1989 as he reached at the maximum of running pay sacle in the year 1989. According to the petitioner he was entitled for grant of pension as provided under Rule 22-A of the Rajasthan (Public Works Department, B & R, Gardens including Irrigation, Water Works and Ayurved Department) Work-charged Employees' Service Rules, 1964 (hereinafter referred to as “the Rules of 1964”).

A reply to the writ petition has been filed on behalf of the respondents stating therein that though the petitioner completed 18 years of service but the pension was not allowed to him as he was not conferred with permanent status under the work-charged Rules, 1964. According to the respondents under Rule 22-A of the Rules of 1964 a permanent work-charged employee is having right either to opt for contributory provident fund or for pensionary benefits. The petitioner being a semi permanent employee was not entitled for such post retiral benefits.

I have heard counsel for the parties.

The respondents have admitted the fact that the petitioner was appointed in the services of the respondents as a work-charged employee w.e.f. 10.11.1973 and he remained in employment of the respondents uptil 26.6.1992 the day on which the petitioner was voluntarily retired from

service. It is also admitted that at the time of retirement the petitioner was working as Massion Gr.I in the pay scale of Rs.910-1520. The respondents have also admitted that increments were allowed to the petitioner time to time and personal pay of Rs.30/- was also given to him.

Rule 3 of the Rules of 1964 classifies work-charged employees in three categories viz. permanent status, semi permanent status and casual. Sub-rule (2) of Rule 3 of the Rules of 1964 provides that work-charged employees having 10 years of service shall be entitled to be conferred with permanent status subject to the condition that their service record stands satisfactory in opinion of the competent authority. In view of sub-rule(2) of Rule 3 of the Rules of 1964 the petitioner also became entitled to be considered for grant of permanent status after completion of 10 years of service. It appears that the competent authority in spite of the fact that the petitioner completed 10 years of service did not consider his case for conferment of permanent status and as such continued him with semi permanent status uptil his retirement after completion of more than 18 years of service. Under sub-rule(2) of Rule 3 of the Rules of 1964 it was obligatory for the competent authority to consider candidature of the petitioner for conferment of permanent status and should have granted permanent status if service record of the petitioner was satisfactory.

As stated above, the respondents allowed all annual increments to the petitioner, personal pay was also allowed to him and he was allowed to work in the respondent department as Massion Gr.I. These facts clearly establish that services of the petitioner were satisfactory. At this stage when the petitioner is claiming pensionary rights it shall not be appropriate to refer the matter to competent authority to consider the petitioner for conferment of permanent status. The facts stated above clearly establish that the services rendered by the petitioner were satisfactory and, therefore, petitioner is deemed to be a work-charged employee of permanent status.

In view of whatever stated above, the petitioner is required to be treated as a permanent work-charged employee. The petitioner being treated as permanent employee became entitled for all pensionary benefits as provided under Rule 22-A of the Rules of 1964. In view of it the respondents while denying pensionary benefits to the petitioner acted arbitrarily.

The writ petition, therefore, is allowed with a direction for respondents to allow pensionary benefits to the petitioner in accordance with Rule 22-A of the Rules of 1964. If any other post retiral benefits except the pensionary benefits have been given to the petitioner then the same shall be adjusted against

the pension which is required to be given to the petitioner from the date of his retirement i.e. 26.6.1992.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.